IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 478 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL MANSUKHLAL MATHURBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 478 of 1992

MR RJ OZA for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 01/10/2004

ORAL JUDGEMENT

This petition is pending since issuance of notice by the learned Single Judge as per order dated 24.1.1992, by which, the court has issued notice, which was made returnable on 30.1.1992 and by way of ad-interim relief,

status quo with regard to possession of the land as on that day to continue upto 31.1.1992 and direct service was permitted. Thereafter, the learned Single Judge had as per order dated 30.1.1992 had issued rule, which was ordered to be heard with Special Civil Application No. 7105 of 1991 and the ad-interim relief granted earlier to continue till further order.

2. The petitioner has moved this court and prayed for issuance of writ of certiorari and/or any other appropriate writ, order or direction declaring that the order dated 1.10.1984 passed by the respondent No. 1 and order dated 25.3.1985 passed by respondent No. 3 confirming the order in Appeal by the respondent No. 4 are ultravirus and void and prayed to set aside the said orders treating the petitioner's lands as excess land under the provisions of the Urban Land Ceiling Act and by way of interim relief, the petitioner has prayed that respondents be restrained from obstructing the possession of the petitioner. The petition is supported with an affidavit of the petitioner dated 23rd January, 1992. The petitioner has along with the petition has annexed the orders under challenge passed by the respondent Nos. 1 and 3 and also produced the record of right of 7X12 extract of the years 1972 to 1990, declaration of statement of agriculture land dated 1.10.1984, Notification issued under Section 4 of the Land Acquisition Act dated 17.9.1986 and telegram dated 16.1.1992 issued to the Revenue Minister and Secretary to Revenue Department and the Additional Collector, U.L.C. Bhavnagar.

3. It is the case of the petitioner that the petitioner hold the property of his HUF and as exemption of agricultural land was granted, the respondent has no authority to withdraw the exemption. The petitioner himself as referred to in the petition that petitioner's brother namely Dolatrai Mathurdas Patel has challenged the order passed by the authority by filing Special Civil Application No. 7105 of 1991. The said petition is admitted by this court and is pending and regarding possession of the land, his brother was also protected by the High Court as per order dated 22.10.1991. The petitioner has also averred that he is illiterate person. He was not aware about the provisions of law and therefore, when he came to know that authority has declared the land of the petitioner as surplus land, he immediately entrusted the papers to his relative. The petitioner has made an application before the appropriate authority for seeking reliefs. The petitioner has also made averments in respect of publication of notification

under Section 4 of the Land Acquisition Act in respect of the part of the land of the petitioner being survey No. 149 Part for extension of runway for aerodrome.

4. On going through the orders and the documents attached thereto, it is found that all the orders and revenue records attached to this petition are in the name of Dolatrai Mathurdas Patel and the revenue record also in the name of Tansukhbhai Mathurdas Patel and both are real brothers of the petitioner, so the documents annexed in this petition were not shown anything in respect of the name of the petitioner in respect of the land for which the relief is sought for but it is the case of the petitioner that after the death of his father, lands were partitioned amongst their brothers.

5. Though affidavit was prepared long back on 4.11.1999 filed by Shri D.B. Vora, Competent Authority and Additional Collector, Bhavnagar in this proceeding, Mr. Pandya, learned AGP has tendered before me today and copy of the same is also given to Mr. Oza in the court today.

5. I have gone through the said affidavit filed by Shri Vora. I have also called for the papers of Special Civil Application No. 7105 of 1991, as in view of the order dated 30.1.1992, while issuing Rule, S.C.A. No. 7105 of 1991 is ordered to be heard with present Special Civil Application. I have also perused the order dated 7.7.1999 passed by the learned Single Judge in this matter, which reads as under :-

> "Mr. Pancholi, learned AGP states that the possession of the land in question was taken over by the authorities on 17.2.1989. Hence, the matter is not cover by Urban Land (Ceiling & Regulation) Repeal Act, 1999.
>
> The matter be listed for final hearing Board commencing from 11th August, 1999."

6. It is the case of the respondent that Competent Authority has passed the order declaring the land excess admeasuring 17806=00 sq.mt. vide order dated 25.3.1985 against which the petitioner preferred appeal being Appeal No. Bhavnagar-4/85 and the same came to be rejected on 18.8.1987 by the Tribunal. Thereafter, further proceedings under Section 10(3) was issued on 9.10.1987, which was published on 12.11.1987 and the land in question is vested into the Government and the petitioner has no right, title remained in the said land.

Thereafter, notice under Section 10 (5) of the Act was issued on 9.1.1989 and possession of the land in question has been taken over by the Government, which has been reflected in the order, which was passed on 7.7.1999.

7. I have also perused the record of Special Civil Application No. 7105 of 1991 filed by brother of petitioner Shri Dolatrai Mathurdas Patel for the similar reliefs annexing various documents. The said petition was admitted vide order dated 22.10.1991. The said petition was came up before the Court for hearing on 17.6.1992 and the Hon'ble court has passed the following order :-

> "Miss V.P. Shah, learned advocate for the petitioner seeks permission to withdraw this petition. Permission granted. Petition stands disposed of as withdrawn. Rule discharged. Interim relief vacated. No order as to costs."

8. In light of this position and in light of the affidavit filed in this proceeding, it is very clear that challenge made by the petitioner is not covered under the provisions of Urban Land (Ceiling & Regulation) Repeal Act, 1999. It is further found from the order dated 7.7.1999 as well as from the affidavit in reply filed on behalf of the respondent that even before the petitioner has approached this court, the possession of the land was already taken over by the authority on 17.2.1989

9. Mr. Oza, learned advocate for the petitioner has not raised any other contentions before me.

10. Considering this fact, in my view, there is no substance in the present petition and the petition deserves to be dismissed. Accordingly, petition is dismissed. Rule is discharged with no costs. Interim relief is accordingly vacated forthwith.

(D.K.Trivedi, J.)
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